

# Software Licence Terms of Use

## Important: Read Carefully

This End User Licence Agreement constitutes a legal agreement ("Licence Agreement") between you (the End User, either an individual or an entity) and DataMasque Limited ("we", "our", "us") for the DataMasque™ software described in your Order Form, including any software, media, and accompanying on-line or printed documentation (together, the "Software"). By clicking on the "Accept" button, installing, copying or otherwise using the Software, you agree to be bound by the terms of this Licence Agreement as set out below. If you do not agree to the terms of this Licence Agreement, click on the "Cancel" button and do not install or use the Software.

## Grant of Licence

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property rights and treaties. Upon your acceptance of this Licence Agreement, we grant you a non-exclusive licence to use the Software on the terms set out in this Licence Agreement and your Order Form. Title, ownership, rights, and Intellectual Property Rights in and to the Software shall remain with us and/or our licensors. The Software is intended only for use in conjunction with supported systems as defined in our support matrix (<https://datamasque.com/solution/#SupportMatrix>), and use of the Software is subject to any limitations imposed by that system. You may:

1. Install, access and use the Software on the computer(s)/device(s)/computer environment(s) and for the duration as described in your Order Form; and
2. Copy the Software for back-up and archival purposes provided any copy must contain all of the original Software's proprietary notices.

## Subscription Period

1. The period during which you may use the Software ("Subscription Period") is recorded in the Order Form.
2. At the expiry of the Subscription Period, you will need to obtain a new Licence to continue using the Software.
3. If you do not obtain a new Licence to use the Software at the end of the Subscription Period, you must stop using the Software and the Software shall cease to operate.

## Fees

1. You must pay the Software licence fees as published by us at the time you submit your Order Form. Fees are payable as per the terms specified in the Order Form.
2. Overdue fees (as defined by 10 days or more overdue) and other amounts payable by you under this Agreement will incur interest at 1.5% per month, calculated daily from due date until payment is made.

3. We will not exercise our rights under clause 3.2 if you are disputing the fees or amounts owing reasonably and in good faith and co-operating fully with us to resolve the dispute.
4. Unless otherwise specified, Software fees are exclusive of any local taxes, tariffs, duties or similar governmental assessments upon the supply of the Software. In the event the fees are subject to any such costs, you are responsible to pay us any additional amount to ensure that we receive the amount we would have received had no such withholding been made.
5. Fees for each renewal term may increase to reflect our current market pricing.
6. If we detect or become aware that your use of the Software exceeds the permitted use specified in your Order Form, then:
  1. If the excessive use occurred in your current Subscription Period, then we may require you to obtain a new Licence and/or pay additional fees to reflect that usage; and
  2. If the excessive use occurred in prior Subscription Periods, we may require you to pay additional fees to reflect that historical usage,

and we may suspend your current Licence if those additional fees are not paid within 10 days of our request.

7. You acknowledge that our fees are set based on your commitment to licence the Software for specified Subscription Periods and that we rely on such committed fee income. Accordingly, you agree that this Licence Agreement cannot be terminated by you before the end of the Subscription Period (whether the Software is used or not). No portion of fees paid in advance is refundable.
8. We may nominate a third party (“Representative”) to invoice and collect fees payable under this Licence Agreement on our behalf. A Representative acting on our behalf is not our agent.

## **Licence Restrictions**

You may not:

1. Install or use the Software, except under the terms of this Licence Agreement;
2. Permit or enable any other individual or entity to install, copy or use the Software without our prior written consent. Where you are permitted to allow a third party to install, copy or use the Software, you agree to ensure that such activity does not exceed your permitted use;
3. Permit or allow any other individual or entity to take possession of the Software (including any computer or device on which the Software is installed or saved, regardless of who owns the computer or device) without our prior written consent;
4. Modify, adapt, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law), merge, combine, or create derivative works of, the Software;
5. Copy the Software (except for the End User's own back-up or archival purposes);

6. Resell, licence, sublicense, distribute, rent, lease, assign, loan or otherwise transfer the Software (or any part of the Software) or any rights to the Software (or any part of the Software); or
7. Remove, erase, or tamper with any copyright or other proprietary notices or labels on or in the Software or fail to preserve all copyright and other proprietary notices in any copy of the Software;
8. Refer to or otherwise use our Intellectual Property Rights as part of any effort to develop a program having any functional attributes, visual expressions or other features similar to the Software or to otherwise compete with our products and services; or
9. Attempt to do any of the foregoing.

You acknowledge and agree that the Software involves and includes proprietary Intellectual Property Rights, information and methodology, and that any disclosure or use of the Software not expressly authorised in this Licence Agreement is not permitted and will result in irreparable injury to us and our licensors not compensable by money damages. Accordingly, you agree that we and our licensors may be entitled to injunctive or other equitable relief to enforce this Licence Agreement and/or prohibit any breach thereof, threatened or actual. The foregoing shall be in addition to, and without prejudice to, or limitation on, any other rights we and our licensors may have under this Licence Agreement, at law or in equity.

## **Your Duties**

You acknowledge that the success of the Software requires your timely co-operation, and you agree to:

1. Ensure that any information which you give to us relating to the use of the Software is complete and accurate;
2. On request, provide information about DataMasque usage on your site, system, etc. This may be done via an electronic capture process;
3. Ensure that anyone else who uses the Software does so in a manner which is consistent with your obligations under this Licence Agreement; and
4. Use the Software for lawful purposes only.

## **Form of Licence**

### **Definitions:**

For the purposes of this Licence Agreement:

1. "Intellectual Property Rights" means all concepts, know-how, inventions, patents, trademarks, trade names, trade dress, trade secrets, ideas, copyright, moral right and any other proprietary rights, , together with any modifications, enhancements, and derivative works of any of the foregoing in any media, tangible or intangible, now in existence or created in the future.
2. "Licence" means a licence for the use of the Software on a defined Target System.

3. "Order Form" means an ordering document or online order specifying the Software to be provided under this Licence Agreement. By submitting an Order Form, you agree to be bound by the terms of this Licence Agreement.
4. "Target System" means a physical or virtual machine on which the Software is installed.
5. "Target Data Source" means the data source on which the Software will be used to mask data.
6. "Third Party Monitor" means a third party that, at your request or with your consent, has access to the Software to assist in supporting your monitored environment.

The Software enables you to mask specified data on a Target Data Source, using rulesets and other configurations specified by you.

Use of the Software is limited to the number of target systems specified by you in the Order Form.

The Licence is specific to the Target System and does not permit the Software to be installed or utilised on any other computer. If (at any time) you wish to increase the number of target systems, you will need to obtain an upgraded licence key from us.

You require a Licence for each Target System.

Users can define and customize use of the Software to work on remote Target Data Source(s) either via encrypted or unencrypted protocol\* by applying, adopting or modifying rule settings and other configurations when using the Software. When these rules settings and other configurations are utilised remotely, information may be disclosed to and through third-party communications service providers. You consent to this information disclosure and use, and you acknowledge and agree that third-party communications services may not be reliable, confidential or continuously available, and that we have no responsibility for third-party communications services.

\*We recommend using encrypted protocols for all datamasking.

We may suspend, disconnect or discontinue your Software Licence at any time without notice and without compensation, if in our reasonable opinion:

1. There is or has been unauthorised, unlawful or fraudulent use of the Software by you;
2. It is necessary to comply with a direction, order or request of any government authority or other competent authority; or
3. You fail to comply with any of the terms of this Licence Agreement.

## **Software updates**

You will be entitled to obtain updates for the Software for the term of this Licence Agreement, if and as they are released. Updates consist of new releases of the Software which provide functional enhancements and error corrections. All such updates shall be deemed to be part of the Software and shall be subject to the terms and conditions of this Licence Agreement. Software

updates include release updates and version upgrades of the Software, but does not include upgrades from one Software product to another. We may vary the technical functionality and operational specification of the Software at any time without notice to you, provided that this does not affect the Software in a materially adverse manner.

## **Support**

1. We shall, at your request, provide you with support (“Support”) for the Software. Support will be provided by us or by another designated party certified by us. Support may include (at our discretion) telephone and/or email help desk support, remote diagnostics and assistance (if you provide the necessary communications access and infrastructure as specified by us to facilitate this), emergency bug fixes, and other such workarounds to ensure the Software conforms to the agreed functionality and technical specifications; but we shall have no obligation to provide on-site attendances or the provision of personnel, contractors or other resources.
2. Support is limited to issues that, in our sole opinion and discretion, arise directly from defects in the Software, and for the avoidance of doubt, does not include the installation of Software updates or training on how to use the Software.
3. Where a service or request does not qualify for Support under this Licence Agreement, we may, by mutual agreement, provide the requested service(s) or request(s) on agreed terms and rates under a separate statement of work.

## **Privacy**

We will not collect or use any personal information from you, except where provided by you (e.g. when you order Software or request support). If you submit or upload personal information to us or our related companies, you consent to the collection, use, processing, transmission and disclosure of that information by us and our related companies. You warrant that you have obtained all necessary consents to disclose the personal information to us and our related companies, and for us and our related companies to retain and use that information for the supply of Software requested by you and any of the other purposes set out in our current privacy statement (accessible at <https://datamasque.com/privacy-statement>). Our privacy statement may be updated from time to time. The parties hereby agree that our privacy statement, as may be modified from time to time by us, is incorporated into this Agreement.

## **System Information**

When you use our Software, or upon Licence renewals, then we may receive and store diagnostic and usage data and information relating to the performance and use of the Software and your environment. We may use this system information for future reference and support, for internal purposes such as auditing, billing, data analysis, and research, and to help us develop, deliver, promote and improve our products and services. We will not disclose any system information which identifies the user or the user environment to third parties.

## **Breach of Licence/Termination**

This Licence Agreement shall terminate automatically if you fail to comply with the terms and conditions of this Licence Agreement. No notice shall be required from us to effectuate such termination. Upon termination, including the expiry of any trial period, you must cease using and delete all copies of the Software and accompanying documentation, and at our request provide certification of the same. The Software may contain software locking or disabling features which may activate upon attempted use of the Software in breach of this Licence Agreement. You agree that incorporation of these features into the Software is commercially reasonable and you accept all risk associated with these features.

## **No Warranty and Limitation of Liability**

The following provisions are without prejudice to any rights you may have at law which may not be legally excluded. We make the Software available to you for use, on the following conditions:

The End User is solely responsible for (and we have no liability for):

1. Ensuring the Target System and Target Data Source are compatible with the Software;
2. Selecting and specifying the data to be masked;
3. Specifying the rule sets and other configurations to be applied when using the Software;  
and
4. All other aspects of Software use.

Accordingly, the Software is made available to you “as is” and we make no warranty as to its use or performance. We do not and cannot warrant the performance or results you may obtain by using the Software.

If we breach any provision of this Licence Agreement (or any rights you may have at law which may not be legally excluded) our entire liability and your exclusive remedy shall be, at our option, either:

1. Return of the fees paid for that Software whilst defective; or
2. Repair or replacement of the Software that does not meet the warranty and which is returned to us with a copy of your receipt.

We do not, unless otherwise expressly recorded in writing, warrant that the Software will comply with any statutory or regulatory requirements in any particular territory that may be applicable to operation of the Software. To the maximum extent permitted by law, we disclaim all warranties, either oral or written, express or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose, with regard to the Software. Except as expressly provided above and to the maximum extent permitted by applicable law, we (together with our directors, officers, employees, agents and related companies) shall not be liable for any damages whatsoever (including, without limitation, damages for lost revenues, loss of business profits, business interruption, loss of business information, or any other pecuniary loss, or any direct, indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether or not foreseeable) arising out of the use of or inability to use the Software even if we have been advised of the possibility of such damages.

Mandatory statute or consumer warranty laws may apply to the Software. If such a law applies, then no provision in this Agreement shall operate to exclude any consumer guarantee, warrantee or right imposed or implied, provided however that our liability is limited to (at our option):

1. Resupplying the Software; or
2. Paying the cost of re-supplying the Software.

## **Indemnification**

You shall be liable for, and shall indemnify and hold us (together with our directors, officers, employees, agents and related companies) harmless from and against any and all actions, claims, costs, damages or liabilities (including our actual attorneys' fees) arising out of or relating to any breach of this Licence Agreement by you.

## **Confidential Information**

You agree to keep all information relating to:

1. All aspects of your commercial agreement with us; and
2. All aspects of the installation, performance and operation of the Software,

confidential, unless first receiving our approval in writing to disclose such information.

We reserve the right to use your name (and logo) to publicise the fact that you are one of our customers. We may engage with you to complete a case study however any material published will not contain any commercially confidential information.

## **Third Parties**

1. Except as we may agree in writing, we have no responsibility for the selection, implementation, interoperability and performance of any third party hardware, software and services used in association with the Software. If you enter into any contract(s) with any other party (whether for the supply of hardware, software, support or otherwise) which uses or incorporates the Software (in all cases, referred to as an “End User Contract”) then you acknowledge and agree that:
  1. We have no liability to you for any act or default, or otherwise, in connection with any End User Contract; and
  2. Our obligations pursuant to this Licence Agreement shall be our sole liability, and your sole remedy against us, on account of any claim relating to the quality or performance of the Software.
2. You are not permitted to offer services to third parties using or incorporating the Software (or any part of the Software), or otherwise permit third parties to benefit from your use of the Software, unless expressly permitted under a separate formal, executed agreement with us.

## **Entire Agreement**

This Licence Agreement:

1. represents the whole of the contract and understanding between the Parties; and
2. replaces all prior agreements and understandings between the Parties with respect to the subject matter of this Licence Agreement.

## **General Provisions**

This Licence Agreement may only be modified in writing signed by you and one of our authorised officers. If any provision of this Licence Agreement is found void or unenforceable, the remainder will remain valid and enforceable according to its terms. This Agreement shall be construed, interpreted and governed by New Zealand law, excluding sections 202 – 206 of the Contract and Commercial Law Act 2017 (United Nations Convention on Contracts for the International Sale of Goods). You submit to the exclusive jurisdiction of the New Zealand Courts. Neither party shall be liable for losses caused by natural disasters, strikes or labour disputes, disruption of communications or other acts or conditions beyond the reasonable control of such party. There is no joint venture, partnership, agency or fiduciary relationship existing between the parties, and the parties do not intend to create any such relationship by this Licence Agreement. The provisions of sections 2 – 5, 9 - 15 and 17 shall survive the expiration or termination of this Licence Agreement. A party's waiver of any breach or its failure to enforce any term of this Licence Agreement may not be deemed a waiver of any other breach or of its right to enforce the same term or others in the future. This Licence Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, provided that this Licence Agreement may not be assigned by End User (whether by operation of law or otherwise) without our prior written consent, which consent may be withheld in our sole discretion. This Agreement is intended to confer benefits on our licensors holding proprietary interests in the Software, and according the licensors may enforce this Agreement.